

Supreme Court, U.S.
FILED

051004 NOV 11 2005

NO.

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In The Supreme Court of the United States

David Sebastian,
Petitioner,

v.

Attorney General of the United States,
Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Summary Overview:

The court below found Sebastian-Soler to have subscribed to the final written and modified oath of allegiance for citizenship before an Immigration and Naturalization Service ("INS") employee under judicial naturalization proceedings. Under 8 U.S.C. §1446(b) (1988)¹, the subject INS employee was "authorized to ... administer oaths, including the oath of the petitioner for naturalization."

While in removal proceedings Sebastian-Soler sought to have his citizenship claim transferred to a district court pursuant to 8 U.S.C. §1252(b)(5)(B) to determine the issue whether the circumstances in which he was administered the modified oath of renunciation and allegiance could qualify as "open court" (8 U.S.C. §1448(a) (1988)) or, in the alternative legal theory, whether he in fact was statutorily exempt from taking the oath in "open court," and to further develop his citizenship claim, in the only opportunity available to him. 8 U.S.C. §1252(b)(5)(C).

In deciding whether to transfer such citizenship claim, the reviewing court found that because Sebastian-Soler had taken the oath of renunciation and allegiance in written form he presented a "genuine issue of fact."

¹ Sebastian-Soler's judicial petition for naturalization was filed on March 11, 1988 and continued pending until November 18, 1993. Section 408 of Pub.L. 101-649, as amended Pub. L. 102-232, Title III, § 305 (n), Dec. 12, 1991, 105 Stat. 1750, titled "*Continuation of current rules (a)(2)(A)*" provides in relevant part:

"[A]ny petition for naturalization which may be pending in a court on October 1, 1991, shall be heard and determined in accordance with the requirements of law in effect when the petition was filed.

however, not "material" since he had allegedly "failed" to take his oath of allegiance *in* "open court" *and before* a "judge" and therefore transfer of his citizenship claim was not warranted. *Sebastian-Soler v. United States AG*, 409 F.3d 1280, 1283 and 1284 – 85 (11th Cir. 2005), Appendix B.

The court below made the foregoing adverse determination without inquiring into following governing statutory terms nor defining the term:

"take in open court an oath" as contained in
- 8 U.S.C. §1448(a) (1988);

"take an oath" as contained in the latter part of 8 U.S.C. §1448(a) (1988) relating to modified oaths of allegiance;

"admitted to citizenship" 8 U.S.C. §1448(a) (1988);

and,

"authorized to ... administer oaths including, the oath of the petitioner for naturalization" 8 U.S.C. §1446(b) (1988)

Questions:

Did the court below err in finding that Sebastian-Soler's citizenship claim presented only a "genuine issue of fact" when Sebastian-Soler presented conclusive documentary evidence acknowledged by the court below as being "the oath of allegiance for citizenship" "signed" by Sebastian-Soler (*Sebastian-Soler*, id.1282) same being done before an "INS Designated Examiner" "authorized to . . . administer oaths, including the oath of the petitioner for naturalization."? 8 U.S.C. §1446(b).

By failing to transfer Sebastian-Soler's citizenship claim to a U.S. District Court did the court below violate Sebastian-Soler's right to a "new" determination on his citizenship claim under 8 U.S.C. §1252(b)(5)(B)?

Did the lower court's lack of inquiry into the above listed relevant statutes governing Sebastian-Soler's citizenship claim as well as the incomplete review of the facts relevant to Sebastian-Soler's citizenship claim satisfy the exhaustive "de novo" review contemplated in *Agosto v. U.S.*, 436 U.S. 748 (1976) and guaranteed to Sebastian-Soler in 8 U.S.C. §1252(b)(5)(B)?

Did the reviewing court make an erroneous and premature determination that Sebastian-Soler "failed" to take the citizenship oath in "open court" without allowing Sebastian-Soler the right to "de novo determination" of "genuine issue[s] of material fact" and factual development of the "underlying legal theor[ies]" in district court as required in the controlling Supreme Court case *Agosto v. U.S.*, 436 U.S. 748 (1976)?

Did the reviewing court's superficial consideration of Sebastian-Soler's citizenship claim violate Sebastian-Soler's constitutional right to a district court's "de novo"

consideration of Sebastian-Soler's citizenship claim as recognized in *Agosto v. U.S.*, 436 U.S. 748 (1976)?

Did the reviewing court's summary denial of Sebastian-Soler's petition for review prevent Sebastian-Soler from properly presenting his citizenship claim substantiated by the following legal theories?

- the manner in which Sebastian-Soler was administered his oath of allegiance statutorily qualified as "open court" under 8 U.S.C. §1448(a);

or, in the alternative,

- the latter portion of §1448(a) relating to modified oaths of allegiance exempted Sebastian-Soler from the "open court" requirement due to his religious convictions

Under such circumstances, did the lower court's failure to define or inquire into the following statutory terms constitute plain error:

- "take in open court an oath" as contained in 8 U.S.C. §1448(a);
- "take an oath" as contained in the latter part of 8 U.S.C. §1448(a) relating to modified oath of allegiance;
- "admitted to citizenship" as contained in 8 U.S.C. §1448(a), 1449, and 1449(b);

and the statutory term,

- "authorized to ... administer oaths including the oath of the petitioner for naturalization" as contained in 8 U.S.C. §1446(b)

Was Sebastian-Soler stripped of the acquired status of "admitted to citizenship" when the district court unlawfully and erroneously dismissed his petition for

naturalization especially when the naturalization record reflects that he had been administered the final oath of renunciation and allegiance in violation of his procedural Due Process rights?

Was the *res judicata* effect of Sebastian-Soler's oath of allegiance eliminated upon such erroneous and unlawful denial?

Did Sebastian-Soler fail to present a "genuine issue of material fact" when the reviewing court failed to consider the possibility that Sebastian-Soler may have complied with the "open court" requirement or that Sebastian-Soler may have been exempted by statute to take the oath in "open court."

Did Sebastian-Soler present a "genuine issue of material fact" sufficient to require transfer of Sebastian-Soler's petition for review to a U.S. District Court pursuant to 8 U.S.C. §1252(b)(5)(B)?

Were the "summary judgment principles" enunciated in *Agosto v. U.S.*, 436 U.S. 748 (1976), which authorize a court of appeals to transfer a citizenship claim to a district court upon a presentation of a "genuine issue of material fact" of a citizenship claim, diminished by the minor change in language made by Congress when it transferred the statute governing treatment of nationality claims by aliens from 8 U.S.C. §1105a (repealed Pub.Law 104-208) to 8 U.S.C. §1252(b)(5)(B) (1996)?

Did the transfer of such statute by Congress or the minor change in statutory language affect in any way the tenets of this Honorable Court's decision in *Agosto v. U.S.*, 436 U.S. 748 (1976)?

According to the Supreme Court's holding in *Campbell v. Gordon*, 10 U.S. 176, 182 6 Cranch. 176, 3

L.Ed. 190 (1810), was Sebastian-Soler duly naturalized, or is such decision inapplicable to Sebastian-Soler's case?

Did the court below err in failing to consider or apply the Supreme Court's holding in *Campbell v. Gordon* to Sebastian-Soler's particular circumstances?

Did the court below violate Sebastian-Soler's right to "de novo" determination of his citizenship claim when it denied Sebastian-Soler's motion to accept his second supplemental filing containing pertinent affidavits and other documentary evidence sustaining Sebastian-Soler's citizenship claim? See Appendix C.

Did the court below err in not accepting Sebastian-Soler's motion to accept his second supplemental filing containing pertinent affidavits and other documentary evidence sustaining Sebastian-Soler's citizenship claim? See Appendix C.

Did the court below surpass its statutory authority by assuming the role of "naturalization court" in making a finding that Sebastian-Soler "is now statutorily ineligible for naturalization" (Sebastian-Soler, *id.* 1287 note 14) when such determination could only be made by a naturalization court especially when Sebastian-Soler was entitled to such determination by a naturalization court upon his request? 8 U.S.C. §1447(b).

Did the lower court err in finding that Sebastian-Soler possessed a "redressability problem" and therefore did not warrant such consideration despite the admitted and acknowledged substantial constitutional, statutory, and regulatory violations prevalent throughout Sebastian-Soler's judicial naturalization proceedings?

Parties to the Proceedings

The Petitioner is David Sebastian. The Respondent is Alberto Gonzales, Attorney General of the United States.

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